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BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				EXAMINER
				HECKERT, JASON MARK
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/720,077

Filing Date: November 25, 2003

Appellant(s): KIM ET AL.

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James T. Eller, Jr.  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 2/11/09 appealing from the Office action mailed 5/24/07.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

**NEW GROUND(S) OF REJECTION**

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Claims 5-7 and 9-11 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,158,257 to Ryan et al. (Ryan) in view of Mayer.

Claims 8 and 12 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Ryan in view of Mayer, and further in view of Durazzani.

Claims 5 and 9 stand rejected under 35 U.S.C. 102(e) as being anticipated by Mayer et al. (Mayer).

#### **(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

#### **(8) Evidence Relied Upon**

6158257	Ryan et al	12-2000
6574997	Mayer et al.	6-2003
5907880	Durazzani et al.	6-1999

#### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

#### **NEW GROUND(S) OF REJECTION**

Claim 5-7, 9-11 rejected under 35 U.S.C. 103(a) as being unpatentable over Ryan in view of Mayer. Ryan et al. discloses a drum type washing machine comprising a cabinet 16, a tub 14, and a clothesbasket 12 that is equivalent to the drum of the claimed invention. Rotational shafts 24 and 26 penetrate into the tub and are coupled with each side of the clothesbasket, thereby making at least

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one coupled with the rear. A motor (col. 3 line 2) drives the shafts. Suspension subassemblies 18 and 20 are included to prevent vibrations and consist of piston 48 and cylinder 44. As depicted in Figure 1, the piston rod 46 is coupled with the cabinet and the cylinder is coupled with the tub. However, they do not disclose arranging the dampening device in the specific fashion of claim 5.

Rearrangement of parts was held to have been obvious. *In Re Japikse* 86 USPQ 70 (CCPA 1950). Ryan et al. already discloses multiple dampers, and it would have been obvious to arrange them in whatever fashion yields the most efficient dampening effect. Ryan et al. even states that preferences for the exact number of the tub suspension subassemblies 18 and 20, and the location of their attachment points to the tub 14 and cabinet 16 can be determined by computer simulation and/or experiment, as is within the purview of those skilled in the art (col 3 line 42 – col 4 line 5). Mayer shows the inclusion of a suspension assembly 7 located in the rear of a tub. Thus, the inclusion of a dampener connected to the tub and cabinet located in the rear of a tub was known at the time of invention. It would have been obvious at the time of invention to modify the subassemblies of Ryan, and include an additional one in the rear of the tub, as disclosed by Mayer, to attenuate vibrations.

Claims 8 and 12 rejected under 35 U.S.C. 103(a) as being unpatentable over Ryan in view Mayer and further in view of Durazzani et al. Ryan et al. does disclose dampers, as described above, but does not state that they are hinge-coupled to the cabinet and tub. Ryan discloses that the cylinder is pivotably attached to the tub and frame (paragraph 3 lines 42-44) either directly or

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indirectly (col. 3 lines 33-37). Hinges, joints, swivels, etc. are common in the art and are not considered novel. Durazzani et al. discloses hinge assemblies 32 and 34 that support the cylinders 30 thereby increasing dampening ability. It would have been obvious to one skilled in the art at the time of the invention to modify Ryan, who discloses the need for a pivotable attachment, and include a hinge or joint assembly, as taught by Durazzani, to pivotably attach the dampener to the tub and cabinet for increased dampening ability.

Claims 5 and 9 rejected under 35 U.S.C. 102(e) as being anticipated by Mayer. Mayer discloses a washing machine with a cabinet 6, washer assembly 2 including a tub and drum, as well as a drive motor 3. A rotational shaft is inherent. Mayer discloses both first and second dampeners 11 located at left and right sides of the bottom of a tub. Also shown is a dampening device 7 located in the rear of the tub.

#### **(10) Response to Argument**

Applicant has argued that the arrangement is not obviated by Ryan. Ryan clearly states that simulated modeling and experimentation is within the skill of one practicing the art, and can be used to calculate the number of dampening devices and their location in the cabinet (col 3 line 42 – col 4 line 5). Examiner does not feel that specific details of the computer modeling or experimental conditions to be germane to the case, as it is clear from Ryan's disclosure that one skilled in the art has the knowledge and capabilities to alter these parameters to arrive at optimum solutions. For example, a triangular tripod

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arrangement is a very common and obvious arrangement when the decision is made to support an object with three legs. Examiner feels that Ryan's disclosure affirms that rearrangement of such dampeners is in fact obvious. Furthermore, the appellant has failed to provide the office with a showing of unexpected results or how their arrangement is unobvious to one skilled in the art.

Additionally, it is clear from the prior art of Mayer, that it was known at the time of invention to locate a dampening device in the rear of a washing machine, connecting the tub to the cabinet. The appellant's claims do *not* limit the invention to including three *and only three* dampeners. The claims only call for there to be a third dampener. Mayer discloses at least three dampeners, and thus anticipates the independent claims.

In regards to claims 8 and 12, Ryan discloses that the cylinder is pivotably attached to the tub and frame (col. 3 lines 33-37). A hinge is a well-known means of pivotably attaching one object to another. Durazanni shows the use of hinges with washing machine dampening structures. Examiner maintains that such a combination is obvious.

#### **(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

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This examiner's answer contains a new ground of rejection set forth in section (9) above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

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/Jason Heckert/

Examiner, Art Unit 1792

Jason Heckert

**A Technology Center Director or designee must personally approve  
the new ground(s) of rejection set forth in section (9) above by signing  
below:**

/Gregory L Mills/

Supervisory Patent Examiner, Art Unit 1700

Conferees:

/Michael Barr/

Supervisory Patent Examiner, Art Unit 1792

/Gregory L Mills/

Supervisory Patent Examiner, Art Unit 1700